

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 05 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

EDGARDO KIEN LASTIMOZA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-70834

Agency No. A72-517-272

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 8, 2005 ^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Edgardo Kien Lastimoza, a native and citizen of the Philippines, petitions
for review of the Board of Immigration Appeals' ("BIA") order affirming an

^{*} This disposition is not appropriate for publication and may not be cited
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's order denying his motion to reopen deportation proceedings conducted in absentia. We review for abuse of discretion, *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1222 (9th Cir. 2002), and deny the petition for review.

Lastimoza seeks to reopen proceedings on the ground that he did not receive proper notice of his hearing. *See* 8 U.S.C. § 1252b(c)(3)(B) (1993). Notice was proper because the Order to Show Cause ("OSC") and notices of hearing were sent by certified mail to Lastimoza's last known address, and the certified mail receipt for the OSC was signed by a relative at that address. *See In re Grijalva*, 21 I. & N. Dec. 27, 32-34 (BIA 1995) (holding OSC and notices of hearing must be sent by certified mail to last known address, and OSC return receipt must be signed by responsible person at address). Lastimoza provides no evidence that he was unaware of the requirement that he report his change of address to the government, or that the relative who signed the return receipt was not a responsible person. *See Singh v. INS*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000) (holding counsel's statements in briefs could not be considered as evidence). Accordingly, the BIA did not abuse its discretion in denying the motion to reopen.

Lastimoza waived any challenge to the BIA's determination that his motion to reopen to apply for adjustment of status was untimely. *See Chebchoub v. INS*, 257 F.3d 1038, 1045 (9th Cir. 2001).

PETITION FOR REVIEW DENIED.